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E.O. 12958: DECL: 05/18/2014
TAGS: [MARR](#) [PARM](#) [PREL](#) [KTIA](#) [RS](#)
SUBJECT: SENIOR LEVEL DISCUSSIONS ON MISSILE DEFENSE
COOPERATION AND U.S. AGREEMENT ON THE U.S.-RUSSIA JOINT
DATA EXCHANGE CENTER

REF: A. 07 STATE 097376 B. 08 STATE 100958 C. 08
MOSCOW 2690

Classified By: ISN Acting A/S Eliot C.S. Kang,
Reason E.O. 12958 1.4 (b) and (d)

11. (U) This is an action request. See paragraph 4.

12. (U) SUMMARY. During their April 1 meeting in London, President Obama and President Medvedev acknowledged that while differences remain over the purposes of deployment of missile defense assets in Europe, the U.S. and Russia would discuss new possibilities for mutual international cooperation in the field of missile defense, taking into account joint assessments of missile challenges and threats, aimed at enhancing the security of our countries, and that of our allies and partners. During the upcoming July summit, the President will hold further discussions on cooperating with Russia on missile defense, as well as finalizing the agreement for the U.S.-Russia Joint Data Exchange Center (JDEC). To this end, Washington would like to send a delegation to Russia May 27-28, led by Ambassador Steve Mull, for broad discussions on missile defense and to begin negotiations on finalizing an agreement on JDEC for the July Summit. END SUMMARY.

13. (C/REL RUSSIA) The delegation's agenda includes strategic discussions on missile defense in the context of the threats we face; the strategic emphasis of our planned missile defense system; force posture; capabilities; our estimated budget; and the ongoing interagency missile defense review. The delegation also plans to explore other areas for cooperation on missile defense, including missile warning, joint exercises, research and development, and policy transparency. The delegation will also seek to resolve the remaining outstanding issues required to implement the JDEC and the Pre-Launch Notification System (PLNS), a key deliverable for the July summit. These issues include taxation, liability, rare exceptions, and site selection.

14. (SBU) ACTION REQUEST: Embassy Moscow is requested to convey the proposed dates for the delegation and the proposed agenda in paragraph 3 to Deputy Foreign Minister Sergey Ryabkov, Ministry of Foreign Affairs, and/or other appropriate MFA officials, as well as General Lieutenant Yevgeniy Buzhinskiy, Main Directorate of International Military Cooperation, Ministry of Defense. The non-paper in paragraph 5, the revised draft Joint Statement on Liability and the Imposition of Taxes at paragraph 6, and the draft diplomatic notes at paragraph 7 should also be delivered. Post is requested to provide confirmation of delivery and to report back to Washington any initial reactions.

15. (CONFIDENTIAL/RELEASABLE TO RUSSIA) BEGIN TEXT OF
NON-PAPER:

U.S. JDEC/PLNS Non-Paper
May 18, 2009

-- The United States and Russia should advance areas of common interest to strengthen our relationship. The Joint Data Exchange Center (JDEC) is a cooperative effort to facilitate joint reporting of missile launches, including third-party launches, which could threaten either country. Realization of the JDEC is a key joint endeavor that should be initiated on a priority basis.

-- In June 2000, Presidents Clinton and Putin signed the Joint Data Exchange Center Memorandum of Agreement (MoA) to create in Moscow a facility designed to mitigate the risk of a false warning of attack being generated by either the U.S. or Russian early warning systems. Together with the Pre-Launch Notification System (PLNS) Memorandum of Understanding (MoU), they are important transparency and confidence-building measures that advance both U.S. and Russian national security interests.

-- Almost nine years later, with the increasing threat of third-party missile launches, the Joint Data Exchange Center could assume even greater importance for the Twenty-First Century, that is, by providing the opportunity for the United States and Russia to work together to jointly report on third party launches which could directly threaten, or be misinterpreted to threaten, either country's territory.

-- We propose that Presidents Obama and Medvedev sign an extension of the JDEC and PLNS agreements, announce the implementation of the JDEC Joint Commission charged under the agreement with overseeing its implementation, and direct the commencement of its work as soon as possible.

-- In addition, we propose that during the Summit the Presidents announce a decision to establish an "interim" arrangement for providing ballistic missile and space launch vehicle notifications pursuant to the PLNS MoU, prior to the JDEC facility becoming operational.

-- Additionally, if the outstanding issues are resolved, the Presidents could direct that construction be initiated as quickly as possible on the JDEC facility in Moscow as soon as a site is mutually agreed upon.

-- For JDEC to proceed, and to take decisive measures in July, we must resolve three outstanding matters: (1) liability and taxation provisions; (2) agreement on "rare exceptions" with respect to ballistic missile launches; and (3) identification of, and agreement on, a JDEC site. In order to facilitate the resolution of outstanding issues, the United States is prepared to accept the Russian position regarding liability in exchange for Russia accepting the U.S. position on taxation and "rare exceptions" for ballistic missile launches.

-- In order to accomplish these tasks, the United States proposes that the Russian MFA host a plenary meeting of senior interagency officials and their technical and legal experts in Moscow tentatively May 27-28. The U.S. team would include senior officials of the State and Defense Departments and the National Security Council.

-- The United States proposes the following agenda for the meeting of senior interagency officials and their technical and legal experts: (a) JDEC liability provisions; (b) JDEC taxation provisions; (c) JDEC and PLNS "rare exceptions" for not reporting/notifying certain ballistic missile launches; (d) the status of Russia's site selection for the JDEC facility and the possibility for a U.S. physical site survey team to meet with Russian

counterparts and visit possible JDEC sites; (e) establishment of the JDEC Commission; (f) setting up an interim arrangement for providing notifications pursuant to the 2000 PLNS MoU; (g) extending the duration of the JDEC and PLNS agreements; (h) accelerating the implementation of JDEC reporting of Phase II and III information; and (i) any other issues the Russian Federation would like to add to the agenda.

-- Following is an addendum to this Non-Paper that discusses key outstanding issues as well as our proposed instruments to move the process forward: a Joint Statement memorializing our agreement on liability and taxation that would supplement the JDEC MoA, and an exchange of diplomatic notes amending the JDEC MoA and the PLNS MoU in regard to "rare exceptions" for ballistic missile launches.

Addendum

Liability and Taxation

-- In June 2008, our legal experts had a very productive meeting and reached basic agreement on most of the text of a draft "Joint Statement." This Joint Statement draft text was based in pertinent part on the 2006 liability protocol (as appropriately modified) to the U.S.-Russia Plutonium Management and Disposition Agreement ("PMDA") signed on September 15, 2006. U.S. and Russian experts agreed in June 2007 that the U.S.-proposed Joint Statement draft text would constitute the basis for negotiations on JDEC liability and taxation.

Liability

-- At the June 2008 legal experts' meeting, the primary concern Russia raised was including in the Joint Statement draft protections for U.S. contractors and their employees that were the same as those for the U.S. Government and its employees.

-- We wish to advise you that we are agreeable) for purposes of this Agreement) to deleting the references to contractors and their employees from the liability provisions of the Joint Statement.

-- We do so as a compromise designed to resolve our primary disagreement and thereby move us forward expeditiously on JDEC implementation.

-- These changes are reflected in the text of the Joint Statement attached to this Non-Paper (see paragraphs 1 and 2).

Taxation and Fees

-- The matter of exemption from taxes and fees is addressed in two provisions of the draft Joint Statement (paragraphs 6 and 7), which are also drawn from the 2000 U.S.-Russia Plutonium Disposition Agreement.

-- During the June 2008 legal experts' meeting, Russia indicated that it saw no major problem with accepting these paragraphs, but would have to consult with Ministry of Finance officials.

-- This response was consistent with other indications the United States has received from Russia that once liability is resolved, the matter of taxes and fees would not pose a problem.

-- Such provisions are standard in cooperative agreements between governments, including our own. For example, in addition to the PMDA, very similar provisions are also found in the Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation ("MNEPR"), signed into law by President Putin in December 2003 (and to which the United States is also Party).

-- It took a great deal of effort for our two governments to reach agreement on liability provisions for the PMDA. The history of the taxation provisions is quite different; we had no such difficulty in reaching agreement in the PMDA on such standard provisions upon which, again, the JDEC provisions are based.

-- Although liability deals necessarily with elements of risk and responsibility, the handling of the matter of taxation is much more straightforward) goes to the core of a cooperative project and how partners in a joint undertaking work together to realize their mutual goal.

-- Thus, in the case of the PMDA) like the JDEC MoA, an agreement for cooperation between our governments) U.S. entities and persons involved in that cooperation, and the equipment and material they bring in to further that cooperation, are exempt from taxes, duties, fees, and similar charges. The same is true for cooperation under MNEPR.

-- On the other hand, imported equipment and material is not exempt from the procedures for inspection called for by the Russian export control system, nor are Russian sub-contractors and their personnel exempt from the Russian Federation taxation system. Both of these qualifications are reasonable.

-- We welcomed the initial positive reaction received during our June 2008 legal experts' meeting to the two provisions on taxes and fees in the draft Joint Statement.

-- Additionally, in the attached draft Joint Statement we accept the specific suggestion made by Russia during the June 2008 meeting that in paragraph 7 the word "necessary" be substituted for "any" before "equipment, supplies, materials or services(".

-- We also note that, here, it is essential that the references to contractors be retained. It is obviously the case, for example, that it will be U.S. contractors, working with their Russian sub-contractors, who will be doing the construction of the JDEC facility on behalf of the U.S. Government. Thus, any taxes or fees levied against the U.S. contractors are, in effect, charges against the U.S. Government, since it would have to absorb all such costs.

-- Such charges would not only be contrary to standard practice with respect to joint cooperative projects between governments, but would also produce a result that would run counter to the specific undertaking in the JDEC MoA that all costs for establishing and operating the JDEC shall be shared equally.

Liability and Taxation: Conclusion

-- It is our hope that we can now consider these matters resolved and move on to the modalities of signature of the Joint Statement.

"Rare Exceptions"

-- Both the JDEC MoA and the PLNS MoU provide for certain limited exceptions to the reporting and notification requirements for space launch vehicle launches, i.e., the "rare exceptions" provision.

-- Since these agreements were originally negotiated, we have determined that for national security reasons the "rare exceptions" provision is also necessary in the case of ballistic missile launches.

-- We believe that both the United States and the Russian Federation may require the flexibility on rare occasions to protect information related to certain ballistic missile launches. It is also possible, for example, that

the necessary timing of certain launches may preclude a Party from meeting the required timelines contained in the PLNS MoU.

-- The extension of the "rare exceptions" provision to ballistic missile launches under the JDEC MoA and the PLNS MoU would not change U.S. or Russian obligations under the START Treaty or the 1988 Ballistic Missile Launch Notification Agreement. The latter agreement is of unlimited duration.

-- The United States would never exercise the "rare exceptions" provision in the case of a ballistic missile launched in the direction of Russia that could potentially be misinterpreted as a hostile launch. The United States proposes to amend the JDEC MoA and the PLNS MoU to codify these additional assurances.

-- The purpose of the JDEC and PLNS agreements is to enhance transparency and confidence, and the United States would not take actions that would undermine these basic objectives. As the language also states, the exceptions provision would be exercised only in "rare" instances.

-- The attached draft diplomatic note exchange reflects the minimal changes that we believe are needed to the JDEC MoA and PLNS MoU in order to extend the "rare exceptions" provision to ballistic missile launches.

Site for the JDEC Facility

-- It is our hope that Russia can provide a status update regarding site selection for the JDEC facility and work to arrange a U.S. physical site survey team to meet with Russian counterparts and visit possible JDEC sites in Moscow.

END TEXT OF NON-PAPER.

16. (SBU) BEGIN TEXT OF REVISED JOINT STATEMENT:

JOINT STATEMENT BETWEEN THE UNITED STATES OF AMERICA AND
THE RUSSIAN FEDERATION
REGARDING THE ISSUES OF LIABILITY AND THE IMPOSITION OF
TAXES ON ACTIVITIES CONDUCTED
PURSUANT TO THE JDEC MEMORANDUM OF AGREEMENT

The United States of America and the Russian Federation
(hereinafter "the Parties"),
In connection with the Memorandum of Agreement between the
United States of America and the Russian Federation on the
Establishment of a Joint Center for the Exchange of Data
from Early Warning Systems and Notifications of Missile
Launches, signed at Moscow on June 4, 2000, hereinafter
referred to as the "JDEC Memorandum of Agreement,"
Pursuant to paragraph 2 of Article 9, and Article 15 of
the JDEC Memorandum of Agreement,
Hereby agree that:

11. Except as specified in paragraph 2 of this Joint
Statement, the Government of the Russian Federation shall
bring no claims or legal proceedings of any kind against
the Government of the United States of America or its
personnel for any loss or damage of whatsoever nature,
including (but not limited to) personal injury, loss of
life, or direct, indirect, or consequential damage caused
to
property of the Government of the Russian Federation,
arising out of activities undertaken pursuant to the JDEC
Memorandum of Agreement. This paragraph shall not apply
to the enforcement of the express provisions of a
contract.

12. In any case when the Government of the Russian
Federation believes that the acts or omissions of an
employee of the Government of the United States of America
caused
and were done with intent to cause personal injury, loss

of
life, or damage:

(a) The Russian Party shall provide written notification to the U.S. Party that identifies the employee and describes the incident, the specific acts or omissions of said employee, and the personal injury, loss of life or damage, and provides an assessment with relevant explanations that the acts or omissions were done with intent to cause personal injury, loss of life, or damage;

(b) The Parties shall as appropriate exchange information, and shall at the request of either of them hold prompt consultations and attempt to achieve a mutual understanding within 90 days of the notification;

(c) If a mutual understanding is not reached within 90 days of the notification, paragraph 1 of this Joint Statement shall not apply to said employee in connection with this incident.

¶3. The Parties shall hold prompt consultations, as appropriate or upon the request of either of them, on claims or legal proceedings arising out of activities undertaken pursuant to the JDEC Memorandum of Agreement.

¶4. Nothing in this Joint Statement shall be construed as:

(a) acknowledging the jurisdiction of any court or forum;

(b) waiving the sovereign, diplomatic, jurisdictional or any other immunity of either Party with respect to claims or legal proceedings that may arise out of activities undertaken pursuant to the JDEC Memorandum of Agreement;

(c) prejudicing any privileges and immunities that are enjoyed by any individual engaging in activities undertaken pursuant to the JDEC Memorandum of Agreement;

(d) permitting claims or legal proceedings in the courts of any country contrary to the provisions of that country's laws;

(e) preventing the Parties from providing compensation in accordance with their national laws; or

(f) preventing either Party from bringing claims or legal proceedings against nationals of its country or permanent residents of its country.

¶5. For the purposes of this Joint Statement, the term "contractors" shall mean contractors, subcontractors, consultants, suppliers, or sub-suppliers of equipment, goods, or services at any level.

¶6. The Government of the United States of America, its personnel, contractors and contractors' personnel shall not be liable to pay any tax or similar charge by the Russian Federation or any of its instrumentalities on activities undertaken pursuant to the JDEC Memorandum of Agreement. The provisions of this paragraph shall not exempt any contractor's personnel who are nationals of or ordinarily resident in the Russian Federation, and are present in the Russian Federation in connection with such activities, from income, social security, or any other taxes imposed by the Russian Federation, or by any instrumentalities thereof, regarding income received in connection with the implementation of the JDEC Memorandum of Agreement.

¶7. The Government of the United States of America, its personnel, contractors, and contractors' personnel may import into, and export out of, the Russian Federation necessary equipment, supplies, materials or services required to implement the JDEC Memorandum of Agreement. Such

importation and exportation shall be exempt from any license fees, restrictions, custom duties, taxes, or any other charges by the Russian Federation or any of its instrumentalities, but not from the procedures called for by the export control system.

18. This Joint Statement is intended to implement paragraph 2 of Article 9, and Article 15, of the JDEC Memorandum of Agreement.

19. The NATO-Russia Partnership for Peace Status of Forces Agreement applies to JDEC activities, and the provisions of that Agreement shall apply to the extent not inconsistent with the provisions of the JDEC MOA and this and any other Joint Statements annexed thereto.

After agreement by the Parties on the issue of "rare exceptions," this Joint Statement shall enter into force on the date of the last note of an exchange of notes between the Parties indicating that the national procedures required for its entry into force have been completed, and shall remain in force as long as the JDEC Memorandum of Agreement remains in force.

DONE at , the day of , 2009, in duplicate in the English and Russian languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA: FOR THE RUSSIAN
FEDERATION:

END TEXT OF REVISED JOINT STATEMENT.

17. (CONFIDENTIAL/RELEASABLE TO RUSSIA) BEGIN TEXT OF DRAFT EXCHANGE OF DIPLOMATIC NOTES:

U.S. Note

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and has the honor to refer to the Memorandum of Agreement Between the United States of America and the Russian Federation on the Establishment of a Joint Center for the Exchange of Data from Early Warning Systems and Notifications of Missile Launches of June 4, 2000 (JDEC MoA) and the Memorandum of Understanding Between the United States of America and the Russian Federation on Notification of Missile Launches of December 16, 2000 (PLNS MoU).

Based on understandings reached between our two Governments concerning the extension of the "rare exceptions" provisions in the JDEC MoA and PLNS MoU to certain ballistic missile launches, the Embassy of the United States proposes that these two agreements be amended as follows:

JDEC MoA, Appendix 2

The chapeau paragraph shall read as follows:

In accordance with Article 3 of this Memorandum, the information shall be exchanged, with rare exceptions, and such exchange of information shall be implemented as otherwise set forth in the phases below:

Phase I shall read as follows:

Each Party shall provide information on detected launches of ICBMs, SLBMs and SLVs belonging to either Party, including such launches of ICBMs, SLBMs and SLVs belonging to either Party that are launched from the territories of third states, and such launches of ICBMs, SLBMs and SLVs of third states that take place on the territory of either Party.

Under "Notes" add a new paragraph 5:

15. It is agreed that neither Party shall exercise its rare exceptions right referred to in this Appendix in the case of a ballistic missile if such a ballistic missile could be misinterpreted as flying in its direction with hostile intent, and that the application to ballistic missiles of such right under this Memorandum shall not affect either Party's obligations under the START Treaty or the 1988 Ballistic Missile Launch Notification Agreement.

PLNS MoU

Paragraph 2 of the PLNS MoU shall read as follows:

Each Party shall, with rare exceptions, provide pre-launch and post-launch notifications for launches of ballistic missiles that meet the range or altitude criteria set forth in paragraph 4 of this Memorandum and pre-launch and post-launch notifications for launches of space launch vehicles. Each Party, at its discretion and in support of the objectives of this Memorandum, may also provide information in a timely fashion on other launches and objects, including de-orbiting spacecraft, and geophysical experiments and other work in near-earth space that are capable of disrupting the normal operation of equipment of the early warning systems of the Parties. It is agreed that neither Party shall exercise its rare exceptions right referred to in the first sentence of this paragraph in the case of a ballistic missile if such a ballistic missile could be misinterpreted as flying in its direction with hostile intent, and that the application to ballistic missiles of such right under this Memorandum shall not affect either Party's obligations under the START Treaty or the 1988 Ballistic Missile Launch Notification Agreement.

If this proposal is acceptable to the Government of the Russian Federation, the Embassy proposes that this Note, together with the Ministry's confirmatory reply thereto, shall constitute an agreement between the two Governments which shall become effective on the date of receipt of the Ministry's Note.

The Embassy avails itself of the opportunity to extend to the Ministry of Foreign Affairs of the Russian Federation the renewed assurances of its highest consideration.

Draft Proposed Ministry Note of Reply

(Complimentary Opening)

(Complimentary Opening) and acknowledges receipt of the Embassy's note No. (insert) dated (insert), which reads as follows: (quote Embassy note in its entirety.) On behalf of the Government of the Russian Federation, the Ministry accepts the proposal contained in the Embassy's Note and confirms that this note together with the Embassy's note shall constitute an agreement between the two Governments which shall become effective on the date of this Note.

(Complimentary Closing)

END TEXT OF DRAFT EXCHANGE OF DIPLOMATIC NOTES.
CLINTON